

**This Contract comprises the Sales Confirmation overleaf and these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions, express or implied, which Buyer purports to apply under any purchase order, order confirmation, specification, other document or by any trade, custom, practice or course of dealing). No terms or conditions, express or implied, endorsed on, delivered with or contained in Buyer's purchase order, order confirmation, specification, other document, or any terms or conditions implied by any trade, custom, practice or course of dealing shall form part of this Contract, and Buyer waives any right it might otherwise have to rely on any other terms or conditions. Any variation of these terms and conditions, and any representation about the goods, shall be ineffective unless expressly agreed in writing and signed by an authorised representative of Seller.**

**Each order or acceptance of a quotation for goods by Buyer from Seller shall be deemed to be an offer by Buyer to buy goods subject to and in accordance with these terms and conditions. Without prejudice to the previous sentence, acceptance of the goods, payment or any other performance by Buyer constitutes acceptance of these terms and conditions. No order placed by Buyer shall be deemed to be accepted by Seller until Seller issues a Sales Confirmation or (if earlier) Seller delivers the goods to Buyer. Buyer shall ensure that the terms of its order are complete and accurate.**

### **TERMS AND CONDITIONS OF SALE**

These terms and conditions shall apply, except to the extent that any contrary provisions are specified overleaf in the Sales Confirmation:

1. **Quantity:** Good delivery shall be constituted by the delivery of the quantity specified overleaf plus or minus 10% at Seller's option. Buyer shall pay for the quantity actually delivered within these allowances.
2. **Shipment:** Delivery of the goods to a carrier in accordance with this Contract and issuance of a bill of lading or similar document by such carrier to Seller shall complete the shipment and delivery to Buyer of the goods covered thereby. The date of the bill of lading or similar document shall be conclusive proof of the date of shipment and delivery. Seller's responsibility for the goods terminates upon issuance of such bill of lading or similar document and all risk in the goods shall thereupon pass to Buyer. Seller shall have a grace period of ten days in advance of and after the date agreed between Seller and Buyer to ship the goods to Buyer. Time of delivery is not of the essence. If the goods are shipped in more than one lot, each lot shall be deemed to be a separate sale or contract. If this Contract omits any particulars relating to the manner of shipment or if Buyer is to give Seller instructions relating to the manner of shipment but Seller has not received instructions within a reasonable time prior to shipment, such particulars or the manner of shipment shall be arranged by Seller at Seller's absolute discretion.
3. **Payment:** If no payment terms are specified overleaf, Buyer shall within 30 days of the goods' delivery pay the full amount of the price and any other sums payable and in the currency specified overleaf (the "**Contract Price**"). The Contract Price does not include VAT or other taxes and duties. If payment is required to be made by letter of credit such letter of credit shall: be an irrevocable letter of credit without recourse, in favour of and satisfactory to Seller; strictly comply with the requirements of this Contract; cover the full Contract Price; be established through a prime bank reasonably satisfactory to Seller; be issued immediately after the date of this Contract as specified overleaf (the "**Contract Date**"); be negotiable on sight; be extended by Buyer if delivery of the goods is delayed for any reason; be valid for negotiation of the relative draft for at least 21 days from the issuing of the relevant bill of lading; and authorise multiple drawings against multiple deliveries. If Seller has reason to suspect that Buyer is likely to fail to satisfy any payment

term of this or any other contract with Seller, Seller at Buyer's expense and risk may resell or may hold all or any part of the goods not already paid for by Buyer, terminate all or any part of this Contract and/or claim damages resulting from such breach. Buyer shall bear any bank charges in connection with the payment. The time for payment or, if applicable, the opening of a letter of credit, shall be of the essence. Other than for payments, time shall not be of the essence unless otherwise stated. In the event of late payment of any amount due hereunder, Seller shall, in addition to any other remedy and without any prior notice, be entitled to interest on a daily basis from the due date for payment ("**Due Date**") to the actual date of payment (before and after judgement) at the rate provided by statute, or (if none is so provided) 2% per annum above the base rate of the central bank or relevant issuing authority of the specified currency as at the Due Date.

4. **Retention of Title:** (1) Subject to applicable law, Seller retains title to the goods under: (a) this Contract, and (b) any other contract between Buyer and Seller, until full payment of the price of all goods that Seller has supplied to Buyer in respect of which payment has become due is received by Seller. Title to the goods shall pass to Buyer at the time of the payment of all such sums. Subject to this clause 4, Buyer shall segregate the delivered goods from other goods, post signs to indicate that the goods are owned by Seller and keep the goods in good condition and insured against all risks for not less than the Contract Price. (2) Buyer is entitled to resell and/or process the retained goods in the ordinary course of business before Seller receives payment for the goods provided always that: if Buyer resells the goods before that time: (a) it does so as principal and not as Seller's agent, and (b) title to the goods shall pass from Seller to Buyer immediately before the time at which resale by Buyer occurs. If before title to the goods passes to Buyer, Buyer becomes subject to any of the events listed in clause 11(b) or (c) then, without limiting any other right or remedy, Seller may have, (x) Buyer's right to resell the goods or use them in the ordinary course of its business ceases immediately, and (y) Seller may at any time require Buyer to deliver up all goods in its possession that have not been resold, and if Buyer fails to do so promptly, enter any premises of Buyer or of any third party where the goods are stored in order to recover them.
5. **Insurance:** Insurance is to be effected by Seller and at Seller's cost only in the case of a CIF or a CIP contract and shall be effected at 110% of the invoice amount and on the basis of the Institute Cargo Clauses (A) including SRCC (strike, riots and civil commotion) and War (except where the goods are delivered by inland transit in which case War shall not be included). Such insurance shall be subject to specific exclusions as Seller's insurer may reasonably determine. The Seller shall arrange any other insurance only at the specific request of and for the account of the Buyer, if so agreed by the Seller.
6. **Credit:** If any event affects or is, in the sole opinion of Seller, likely to affect Buyer's creditworthiness, including delay in making any payment, and Seller has a legitimate concern about Buyer's capability to make any payment under this Contract or any other contract with Seller on the due date, Seller or its factor, in its sole discretion, may at any time modify or cancel the credit of Buyer both as to time and amount, and may demand payment in cash before shipment or delivery of the whole or any part of the goods.
7. **Claims:** (1) Buyer shall, upon delivery to it or to a third party designated by it, carefully inspect the goods. The goods shall be deemed to be accepted and no claim may be made by Buyer if Seller does not receive without undue delay (*ohne schuldhaftes Zögern*) a written notice of defect of the goods (in respect of apparent defects) or after the discovery of such defect (in respect of latent defects), provided the defect would have been identifiable during such an inspection or on ordinary use. (2) Seller or its agent shall have the right to inspect and/or test the goods and, if in its reasonable opinion the notice is without merit, reject the notice. (3) If a claim is made in respect of defective goods and a notice is received in accordance with clause 7(1) and not rejected pursuant to clause 7(2), Seller shall, at its election within 30 days after receipt of the notice referred to in clause 7(1), either repair or

replace the defective goods in full satisfaction of such claim and Seller shall have no further liability in connection with the claim. (4) Seller's maximum liability for any failure to repair or replace the goods in accordance with clause 7(3) shall be the Contract Price as paid by Buyer for those defective goods. (5) The sole remedy of Buyer shall be in damages which shall be subject to the exclusions and limitations in clause 8.

8. **Limitation of liability of Seller:** Subject to clause 7 (except as stated in clause 7(5)), Seller's liability shall be limited according to this clause 8: (1) All warranties, conditions and other terms implied by statute, trade or custom are, to the fullest extent permitted by applicable law, excluded from this Contract. (2) Seller shall not be liable in the case of ordinary negligence (einfache Fahrlässigkeit) of its legal representatives, employees and other agents if there is no violation of the fundamental obligations (Kardinalpflichten) of this Contract. (3) If Seller is liable on the merits according to clause 8(1) with regard to damages, the liability shall be limited to damages that were foreseeable by Seller at the time of the conclusion of this Contract or that would have been foreseeable if usual due care and diligence had been exercised. (4) If liability is due to ordinary negligence, Seller's obligation to indemnify for damage to property and any other financial damage resulting therefrom shall be limited to the amount covered by product liability insurance or third party liability insurance even if fundamental obligations (Kardinalpflichten) have been violated. (5) (a) Notwithstanding clauses 8(3) and 8(4), Seller's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with this Contract is limited to the Contract Price. (b) Subject to applicable law, Seller shall not be liable to Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct or consequential, or for any indirect or consequential loss which arises out of or in connection with this Contract. (6) The exclusions and limitations regarding liabilities that are detailed above apply to the same extent to any of Seller's legal representatives, employees and other agents. (7) If Seller provides technical information or advice and if this technical information and advice is not part of the owed performance contractually agreed, they shall be provided free of charge and all liability of Seller shall be excluded. (8) The restrictions of this clause 8 shall not apply to any liability of Seller (a) due to wilful conduct (vorsätzlichem Verhalten), (b) gross negligence (grobes Verschulden) or (c) due to loss arising out of death, injury to body or health (Verletzung von Leben, Körper, Gesundheit) or (d) where any other restriction by applicable law is excluded, in particular but without being limited to the Product Liability Act (Produktionshaftungsgesetz). (9) Any other liability not expressly provided for in clause 8(1) to 8(8) shall be disclaimed.
9. **Force Majeure:** Seller's performance hereunder is subject to and Seller shall have no liability under this Contract for any failure to perform or any delay in performing any of its obligations under this Contract if such failure or delay results from any event, circumstance or cause beyond Seller's (or its supplier's) control (whether or not now contemplated by either party) (a "**Force Majeure Event**"), including: war or armed conflict, civil unrest, piracy, terrorism, violence or the threat of any such event; labour disputes; adverse weather; natural events or disasters; epidemic or pandemic; explosion, fire or accidental loss or damage; shortage or failure of transport, infrastructure or utilities; any law or action by a government or public authority including sanctions, export or import restrictions or detention of goods; a refusal of or failure to issue any licence consent or approval; and non-performance by third parties. If Seller is prevented or delayed from performing any of its obligations under this Contract by a Force Majeure Event, Seller may, at its election and without liability to Seller by notice to Buyer terminate all or any portion of this Contract affected by the Force Majeure Event, or delay performance of any affected obligation under this Contract until a reasonable time after the Force Majeure Event shall have ended and/or for a period equal to the duration of the Force Majeure Event. Seller shall make reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations and after the end of

the Force Majeure Event shall notify Buyer that performance of its obligations will be resumed. The exit of any member state from the European Union or the accession of any additional member state to the European Union shall not entitle either party to claim force majeure or terminate this Contract.

10. **Intellectual Property:** Buyer shall immediately notify Seller of any claim made or threatened for infringement of any intellectual property right of any third party resulting from the exportation, possession, use or resale of any of the goods in any country.
11. **Breach by Buyer:** If: (a) Buyer fails to carry out or is in breach of any term or condition of this Contract and/or any other contract with Seller; or (b) Buyer is or becomes insolvent or unable to pay its debts as they fall due; or (c) Buyer is subject to bankruptcy, insolvency or reorganisation proceedings, or is dissolved or liquidated, whether voluntarily or involuntarily, or a receiver or trustee is appointed for all or a substantial part of Buyer's assets, or Buyer makes an assignment for the benefit of creditors, or any other proceedings analogous in nature or effect are instituted by or against Buyer; then: (x) Seller may without prejudice to any rights or remedies that it may have under applicable law terminate all or any part of this Contract and/or any other contract with Buyer; and/or (y) resell the goods or hold the goods at Buyer's expense and risk and/or postpone the shipment of the goods or stop the goods in transit; provided, however, that Seller's election of any of the remedies in sub-clause (y) of this clause shall not preclude Seller's right to terminate later all or any part of this Contract and/or any other contract with Buyer as provided in sub-clause (x) of this clause. In any such case, any unpaid portion of the contract price under this or any other contract with Buyer and any other sums payable shall without further notice become immediately due and payable and Buyer shall reimburse Seller for all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by Seller as a result.
12. **Construction:** The meaning of any term used herein and the obligations of both parties shall, to the extent applicable and provided the context does not otherwise require, be determined in accordance with the Uniform Customs and Practice for Documentary Credit and (to the extent that the Incoterms are expressed overleaf) the Incoterms adopted by the International Chamber of Commerce and in effect on the Contract Date. In the event of any inconsistency between these terms and conditions and the Incoterms or UCP, the Incoterms or UCP (as the case may be) shall prevail.
13. **Governing law and Jurisdiction:** (1) This Contract and any disputes or claims (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of the Federal Republic of Germany (and the UN Convention on the International Sale of Goods and international private law shall not apply). (2) If the Buyer is a corporation, limited liability company or commercial partnership or otherwise operates a commercial business (*Kaufmann* within the meaning of sec. 1 para. 1 of the German Commercial Code, *HGB*) or is a legal entity or special fund organised under public law: (a) the courts of the city of Düsseldorf, Federal Republic of Germany, shall have exclusive jurisdiction in respect of any disputes or claims (including any non-contractual disputes or claims) against Seller arising out of or in connection with this Contract or its subject matter or formation and (b) for the exclusive benefit of Seller, Seller may at its sole discretion take action against Buyer in any competent court of the place of Seller's address shown overleaf, or in any competent court of the place of performance of this Contract or in any competent court of the place where Buyer has its main assets. Buyer agrees to maintain address for service in the Federal Republic of Germany throughout the duration of this Contract and notify the same to Seller.

14. **Miscellaneous:** (1) No one other than a party to this Contract shall have the right to enforce its terms notwithstanding that any such term of this Contract may purport to confer, or may be construed as conferring, any benefit on such third party and irrespective of whether such third party is identified in this Contract. (2) No failure to exercise, nor any delay or omission by Seller in exercising, any right, power or remedy provided under this Contract or by law shall waive that or any other right or remedy. (3) Any notice given to a party under or in connection with this Contract shall be in writing and shall be delivered by hand or by pre-paid first class post or other next day delivery service at its registered office or principal place of business. This clause does not apply to the service of any proceedings or other documents in any legal action. (4) If any clause or any part of any clause of this Contract is or becomes invalid, illegal or unenforceable for any reason under any applicable law, it shall not affect the validity and enforceability of the rest of this Contract. (5) A phrase or list beginning with “including” is for illustration only and does not limit the generality or extent of any preceding word(s) or phrase. (6) Neither party may, other than a transfer or an assignment by Seller to its affiliated company in respect of any intra-group reorganisation, assign the benefit of or sub-contract its obligations under this Contract to a third party without the other party’s prior written consent. (7) The Buyer shall have the right to set-off or retention, only to the extent that the counterclaim has not been disputed by Seller or been determined by a final and binding decision. (8) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. (9) Any samples, drawings, descriptive matter or advertising produced by Seller and any descriptions or illustrations contained in Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the goods referred to in them. They shall not form part of the Contract nor have any contractual force.
15. **Compliance with policies:** Buyer shall comply with Seller’s policies displayed at <http://europe.marubeni.com/policies/>.